

REMARKS

This responds to the Office Action dated June 14, 2006.

Claims 11, 14, 16, and 28 are amended. Claims 1-56 remain pending in this application.

Information Disclosure Statement

Applicant submitted an Information Disclosure Statement and a 1449 Form on June 21, 2006. Applicant respectfully requests that initialed copies of the 1449 Forms be returned to Applicant's Representatives to indicate that the cited references have been considered by the Examiner.

§102 Rejection of the Claims Using Kruse

Claims 1, 2, 6, 8, 9, 10, 22, 25-27 and 28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kruse et al. (U.S. Patent No. 6,201,993, hereinafter "Kruse").

Claim 1

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Kruse do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Kruse, among other things, a teaching or suggestion of a processor including a cardiac monitor controller that is upgradeable to a pacemaker controller by programming an implantable medical device, as recited in claim 1.

The Office Action states:

Kruse et al. teaches the use of a cardiac monitor that is upgradeable via a programmer (see column 3, lead lines 2-7) and a device capable of being programmed to detect far-field electrogram signals (see column 4, lead lines 54-56).

However, the cited column 3, lines 2-7 of Kruse relate to devices "to upgrade the programmer to program and a-interrogate [sic] ... implantable pulse generator models." In contrast, claim 1 relates to upgrade a cardiac monitor controller of an implantable medical device by programming the implantable medical device. The cited column 4, lines 54-56 of Kruse relate to rejection of far-field noise. It is unclear how the rejection of far-field noise would anticipate far-field

electrogram sensing. Moreover, claim 1 recites a sensing circuit “adapted to be programmed from a circuit suitable for far-field electrogram sensing to a circuit suitable for intracardiac electrogram sensing when the cardiac monitor controller is upgraded to the pacemaker controller”, as opposed to merely a “device capable of being programmed to detect far-field electrogram signals.” Applicant respectfully requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 1.

Claims 2, 6, 8, 9, and 10

Applicant respectfully traverses the rejection. Claims 2, 6, 8, 9, and 10 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2, 6, 8, 9, and 10.

Applicant respectfully requests reconsideration and allowance of claims 2, 6, 8, 9, and 10.

Claim 22

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Kruse do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Kruse, among other things, a teaching or suggestion of an implantable CRM device including a CRM circuit upgradeable from a monitoring circuit to a pacing circuit after the implantation of the implantable CRM device, as recited in claim 22.

The Office Action states:

Kruse et al. teaches the use of a cardiac monitor that is upgradeable via a programmer (see column 3, lead lines 2-7) and a device capable of being programmed to detect far-field electrogram signals (see column 4, lead lines 54-56).

However, the cited column 3, lines 2-7 of Kruse relate to devices “to upgrade the programmer to program and a-interrogate [sic] ... implantable pulse generator models.” In contrast, claim 22 recites “a CRM circuit upgradeable from a monitoring circuit to a pacing circuit”. The cited column 4, lines 54-56 of Kruse relate to rejection of far-field noise. It is unclear how the rejection of far-field noise would anticipate far-field electrogram sensing. Applicant respectfully

requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 22.

Claims 25-27 and 28

Claim 28 has been amended to correct a typographical error.

Applicant respectfully traverses the rejection. Claims 25-27 and 28 are dependent on claim 22, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 22 is incorporated herein to support the patentability of claims 25-27 and 28.

Applicant respectfully requests reconsideration and allowance of claims 25-27 and 28.

§102 Rejection of the Claims Using Sluetz

Claims 11-15 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sluetz et al. (U.S. Patent No. 4,662,382, hereinafter “Sluetz”).

Claim 11

Claim 11 has been amended to better describe the recited subject matter. Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Sluetz do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Sluetz, among other things, a teaching or suggestion of a first implantable electrode configured to be implanted in a body away from the heart and an adaptor body configured to allow the first implantable electrode to be implanted in the body away from the heart, as recited in claim 11.

Applicant respectfully requests reconsideration and allowance of claim 11.

Claims 12-15

Applicant respectfully traverses the rejection. Claims 12-15 are dependent on claim 11, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 11 is incorporated herein to support the patentability of claims 12-15.

Applicant respectfully requests reconsideration and allowance of claims 12-15.

§102 Rejection of the Claims Using Bocek

Claims 16, 17, 20 and 21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Bocek et al. (U.S. Patent No. 6,889,079, hereinafter "Bocek").

Claim 16

Claim 16 has been amended to provide proper antecedent basis. Applicant respectfully submits that the amendment is not in response to the §102 rejection.

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Bocek do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Bocek, among other things, a teaching or suggestion of a device configuration module adapted to generate instructions for configuring an implantable medical device into one of an implantable cardiac monitor and an implantable pacemaker, as recited in claim 16.

The Office Actions states:

... the Bocek et al. patent teaches an implantable medical device programmer, comprising a device configuration module adapted to generate instructions for configuring an implantable medical device into one of an implantable cardiac monitor and an implantable pacemaker (see abstract and column 11, lead lines 40-45).

However, the cited abstract and column 11, lines 40-45 of Bocek relate to modifying pacing parameters prior to or during supraventricular rhythm (SVR) characterization. It is unclear how modifying pacing parameters, or anything else in these cited portions of Bocek, anticipates configuring an implantable medical device into one of an implantable cardiac monitor and an implantable pacemaker.

Additionally, Applicant is unable to find in the cited portions of Bocek a teaching or suggestion that the device configuration module generates instructions for configuring the implantable medical device into the implantable pacemaker in response to a detection of the predetermined condition, as recited in claim 16. The Office Action states:

It also teaches a device configuration module that generates instructions for configuring the implantable medical device into the implantable pacemaker in response to the detection of a predetermined condition (see column 9, lead line 23-28 & Table 1).

The cited column 9, lines 23-28 relate to programming commands allowing “a physician to set or modify various parameters ... that optimize the operation of the cardiac rhythm system for a particular patient’s conditions.” Table 1 relates to modified pacing modes for SVR characterization. It is unclear how such programming commands or pacing modes provides for “configuring the implantable medical device into the implantable pacemaker in response to a detection of the predetermined condition” as recited in claim 16.

Applicant respectfully requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 16.

Claims 17, 20, and 21

Applicant respectfully traverses the rejection. Claims 17, 20, and 21 are dependent on claim 16, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 16 is incorporated herein to support the patentability of claims 17, 20, and 21.

Applicant respectfully requests reconsideration and allowance of claims 17, 20, and 21.

§102 Rejection of the Claims Using Levine

Claims 16, 18, 19, 20 and 21 were rejected under 35 U.S.C. § 102(e) as being anticipated by Levine et al. (U.S. Patent No. 6,925,326, hereinafter “Levine”).

Clarification

The Office Action cites “Bocek et al.” throughout the paragraph following the statement “Claims 16, 18, 19, 20, & 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Levine et al. (US 6925326 B2)”. Applicant believes that “Levine et al.” is intended to be cited, and responds to the rejection accordingly. However, Applicant respectfully requests a clarification of the rejection in the next official communication.

Claim 16

Claim 16 has been amended to provide proper antecedent basis. Applicant respectfully submits that the amendment is not in response to the §102 rejection.

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Levine do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Levine, among other things, a teaching or suggestion of a device configuration module adapted to generate instructions for configuring an implantable medical device into one of an implantable cardiac monitor and an implantable pacemaker, as recited in claim 16.

The Office Actions states:

... the [Levine et al.] patent teaches an implantable medical device programmer, comprising a device configuration module adapted to generate instructions for configuring an implantable medical device into one of an implantable cardiac monitor and an implantable pacemaker (see column 12, lead lines 18-23 & column 15, lead lines 8-15).

However, the cited column 12, lines 18-23 and column 15, lead lines 8-15 of Levine relate to operation of an “algorithm 200”, including its enabling and disabling. This algorithm “is enabled for measuring the AV conduction time and automatically adjusting the AV hysteresis and PV hysteresis (Levine, column 10, lines 4-6). It is unclear how this algorithm or its operation, or anything else in these cited portions of Levine, anticipates configuring an implantable medical device into one of an implantable cardiac monitor and an implantable pacemaker.

Additionally, Applicant is unable to find in the cited portions of Levine a teaching or suggestion that the device configuration module generates instructions for configuring the implantable medical device into the implantable pacemaker in response to a detection of the predetermined condition, as recited in claim 16. The Office Action states:

It also teaches a device configuration module that generates instructions for configuring the implantable medical device into the implantable pacemaker in response to the detection of a predetermined condition (see column 12, lead lines 18-23 & column 15, lead lines 8-15).

The “predetermined condition” of claim 16 is recited in the claim to be “indicative of a need for a pacing therapy” and detected from physiological data. It is unclear which element in the cited portions of Levine provides for “configuring the implantable medical device into the implantable pacemaker in response to a detection of the predetermined condition” as recited in claim 16. It is

also unclear which element in the cited portions of Levine is read as the “predetermined condition” of claim 16.

Applicant respectfully requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 16.

Claims 17, 20, and 21

Applicant respectfully traverses the rejection. Claims 17, 20, and 21 are dependent on claim 16, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 16 is incorporated herein to support the patentability of claims 17, 20, and 21.

Applicant respectfully requests reconsideration and allowance of claims 17, 20, and 21.

§102 Rejection of the Claims Using Adams

Claims 29, 32-37, 40, 42, 43, 46-51, 54 and 56 were rejected under 35 U.S.C. § 102(b) as being anticipated by Adams (U.S. Patent No. 5,439,481, hereinafter “Adams”).

Claim 29

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Adams do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Adams, among other things, a teaching or suggestion of generating instructions readable by an implantable cardiac monitor, the instructions upgrading an implantable cardiac monitor to an implantable pacemaker, including programming a sensing circuit for sensing an intracardiac electrogram, as recited in claim 29.

The Office Action states:

... the Adams patent teaches a computer or computer-based system capable of generating instructions readable by an implantable cardiac monitor, the instruction upgrading the implantable monitor to an implantable pacemaker (see column 4, lead lines 57-63), including programming a sensing circuit for sensing an intracardiac electrogram, and transmitting the instructions to the implantable monitor via a wireless system (see column 4, lead lines 57-63),

The cited column 4, lead lines 57-63 of Adams states:

... and externally programmable switch subsystem 64 capable of receiving and sending program data to and from external program controller subsystem 40 including turning on and off the semi-automatic atrial cardioversion mode in response to program commands received from external program controller subsystem 40.

It is unclear how the cited portions of Adams provide the basis supporting the assertion quoted above. Specifically, it is unclear how the cited column 4, lead lines 57-63 of Adams teaches (1) generating instructions upgrading an implantable monitor to an implantable pacemaker, and (2) programming a sensing circuit for sensing the intracardiac electrogram. Applicant respectfully requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 29.

Claims 32-36

Applicant respectfully traverses the rejection. Claims 32-36 are dependent on claim 29, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 29 is incorporated herein to support the patentability of claims 32-36.

Applicant respectfully requests reconsideration and allowance of claims 32-36.

Claim 37

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Adams do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Adams, among other things, a teaching or suggestion of generating instructions readable by an implantable pacemaker, the instructions converting the implantable pacemaker to an implantable cardiac monitor, including programming a sensing circuit for sensing a far-field electrogram, as recited in claim 37.

Applicant is unable to find in the Office Action any assertion that Adams teaches (1) generating instructions converting an implantable pacemaker to an implantable cardiac monitor, and (2) programming a sensing circuit for sensing a far-field electrogram. Applicant respectfully requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 37.

Claims 40 and 42

Applicant respectfully traverses the rejection. Claims 40 and 42 are dependent on claim 37, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 37 is incorporated herein to support the patentability of claims 40 and 42.

Applicant respectfully requests reconsideration and allowance of claims 40 and 42.

Claim 43

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Adams do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Adams, among other things, a teaching or suggestion of generating instructions readable by an implantable cardiac monitor, the instructions upgrading an implantable cardiac monitor to an implantable pacemaker, including programming a sensing circuit for sensing an intracardiac electrogram, as recited in claim 43.

The Office Action states:

... the Adams patent teaches a computer or computer-based system capable of generating instructions readable by an implantable cardiac monitor, the instruction upgrading the implantable monitor to an implantable pacemaker (see column 4, lead lines 57-63), including programming a sensing circuit for sensing an intracardiac electrogram, and transmitting the instructions to the implantable monitor via a wireless system (see column 4, lead lines 57-63),

The cited column 4, lead lines 57-63 of Adams states:

... and externally programmable switch subsystem 64 capable of receiving and sending program data to and from external program controller subsystem 40 including turning on and off the semi-automatic atrial cardioversion mode in response to program commands received from external program controller subsystem 40.

It is unclear how the cited portions of Adams provide the basis supporting the assertion quoted above. Specifically, it is unclear how the cited column 4, lead lines 57-63 of Adams teaches (1) generating instructions upgrading an implantable monitor to an implantable pacemaker, and (2) programming a sensing circuit for sensing the intracardiac electrogram. Applicant respectfully requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 43.

Claims 46-50

Applicant respectfully traverses the rejection. Claims 46-50 are dependent on claim 43, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 43 is incorporated herein to support the patentability of claims 46-50.

Applicant respectfully requests reconsideration and allowance of claims 46-50.

Claim 51

Applicant respectfully traverses the rejection and submits that the Office Action has not set forth a proper *prima facie* case of anticipation because the cited portions of Adams do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Adams, among other things, a teaching or suggestion of generating instructions readable by an implantable pacemaker, the instructions converting the implantable pacemaker to an implantable cardiac monitor, including programming a sensing circuit for sensing a far-field electrogram, as recited in claim 51.

Applicant is unable to find in the Office Action any assertion that Adams teaches (1) generating instructions converting an implantable pacemaker to an implantable cardiac monitor, and (2) programming a sensing circuit for sensing a far-field electrogram. Applicant respectfully requests a clarification of the rejection in the next official communication, or withdrawal of the rejection is believed appropriate.

Applicant respectfully requests reconsideration and allowance of claim 51.

Claims 54 and 56

Applicant respectfully traverses the rejection. Claims 54 and 56 are dependent on claim 51, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 51 is incorporated herein to support the patentability of claims 54 and 56.

Applicant respectfully requests reconsideration and allowance of claims 54 and 56.

§103 Rejection of the Claims Using Kruse

Claims 3-5, 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kruse.

Claims 3-5

Applicant respectfully traverses the rejection. Claims 3-5 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 3-5.

Applicant respectfully requests reconsideration and allowance of claims 3-5.

Claims 23 and 24

Applicant respectfully traverses the rejection. Claims 23 and 24 are dependent on claim 22, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 22 is incorporated herein to support the patentability of claims 23 and 24.

Applicant respectfully requests reconsideration and allowance of claims 23 and 24.

§103 Rejection of the Claims Using Adams

Claims 30, 31, 38, 39, 41, 44, 45, 52, 53 and 55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams.

Claims 30 and 31

Applicant respectfully traverses the rejection. Claims 30 and 31 are dependent on claim 29, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 29 is incorporated herein to support the patentability of claims 30 and 31.

Applicant respectfully requests reconsideration and allowance of claims 30 and 31.

Claims 38, 39, and 41

Applicant respectfully traverses the rejection. Claims 38, 39, and 41 are dependent on claim 37, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 37 is incorporated herein to support the patentability of claims 38, 39, and 41.

Applicant respectfully requests reconsideration and allowance of claims 38, 39, and 41.

Claims 44 and 45

Applicant respectfully traverses the rejection. Claims 44 and 45 are dependent on claim 43, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 43 is incorporated herein to support the patentability of claims 44 and 45.

Applicant respectfully requests reconsideration and allowance of claims 44 and 45.

Claims 52, 53, and 55

Applicant respectfully traverses the rejection. Claims 52, 53, and 55 are dependent on claim 51, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 51 is incorporated herein to support the patentability of claims 52, 53, and 55.

Applicant respectfully requests reconsideration and allowance of claims 52, 53, and 55.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6965 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

RICHARD S. SANDERS

By his Representatives,

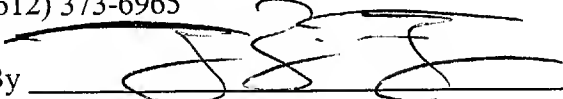
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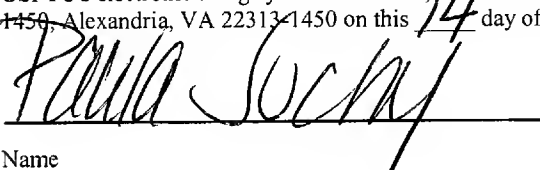
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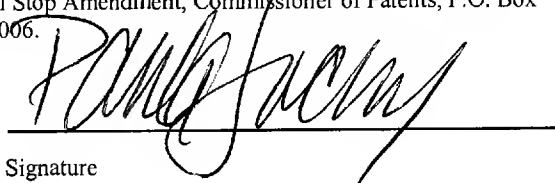
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of September 2006.


Name


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